

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

| | | |
|-----------------------------|---|-------------------------------|
| STATE OF NEW MEXICO ex rel. |) | |
| State Engineer, |) | |
| |) | |
| Plaintiff, |) | No. 69cv07941-MV/LFG |
| |) | |
| v. |) | Rio Chama Stream System |
| |) | |
| ROMAN ARAGON, et al., |) | Pueblo Claims Subproceeding 1 |
| |) | |
| Defendants. |) | |
| |) | |

OHKAY OWINGEH'S SECOND MOTION TO EXTEND TIME FOR RULE 26
DISCLOSURE BY ONE EXPERT WITNESS;
AFFIDAVIT OF DR. HENRY WALT

Ohkay Owingeh ("Pueblo") moves the Court for a second time to extend the deadline for the Rule 26 disclosure of the report by its expert witness, Dr. Henry Walt. In its order of October 25, 2013, the Court granted the Pueblo's request to extend to February 7, 2014, the disclosure of Dr. Walt's report due to the witness's illness. Document 10973. Dr. Walt has suffered another illness and another hospitalization, and has undergone another surgery. The Pueblo seeks an extension of time to March 20, 2014, six additional weeks, to permit Dr. Walt to complete his report for disclosure to the parties to this proceeding. In support of this motion, Ohkay Owingeh asserts:

1. The Order Granting Extension of Time of October 25, 2013, established the date of February 7, 2014, as the date for disclosure of Dr. Walt's Rule 26(a)(2) reports.
2. The Pueblo believes that Dr. Walt, an ethnohistorian, will be unable to complete the work necessary for disclosure of his expert witness report by February 7.

- a. Dr. Walt was diagnosed with a detached retina on December 10. He underwent surgery two days later, on December 12, to repair a partial retinal tear. For two weeks following the surgery, he was required to be prone, on his stomach, facing to the left, and not read. On the third week, he was required to be prone but could turn himself to one side or another. He still was prohibited from reading. Four weeks since the surgery, he is able to read only for limited periods, an hour or two. His vision is improving. *See*, Letter from Mark T. Chiu, M.D., January 3, 2014, and affidavit of Henry Walt, Ph.D. attached.
 - b. Dr. Walt was totally temporarily disabled for a period of almost one month.
 - c. Dr. Walt remains able to work only partial days. He expects to be able to read and write for 4-5 hours per day commencing the week of January 27.
 - d. Dr. Walt is finished with his research and analysis and had completed a draft of his report prior to his partial loss of sight and inability to read. The report has been reviewed by Tribal Elders who have made comments that Dr. Walt must consider and incorporate as appropriate. He believes he will complete the report in time for disclosure to the parties on or before March 20, 2014.
3. Accordingly, a six-week extension of the deadline established in the October 25, 2013, Order is necessary for the Pueblo to disclose its ethnohistorian expert witness report as required by Rule 26(a)(2). All other Pueblo expert reports were disclosed on December 6, 2013. At the request of one of the parties, the Pueblo does propose a three-month extension of the schedule established by the court for other deadlines for other parties. The Pueblo believes a three month extension is reasonable given the

approximately three month delay caused by Dr. Walt's successive periods of illness.

If granted, the new schedule would be as follows:

| EVENT | DATE ESTABLISHED BY 4/11/2013 ORDER | PROPOSED NEW DATE |
|---|--|------------------------------|
| Ohkay Owingeh's Rule 26(a)(2) disclosure for Dr. Henry Walt | 2/7/2014 (10/25/13 Order) | 3/20/2014 |
| State's Rule 26(a)(2) disclosures | 7/16/2015 | 10/16/2015 |
| Other parties' Rule 26(a)(2) disclosures | 1/14/2016 | 4/14/2016 |
| All parties' expert rebuttal reports | 7/14/2016 | 10/14/2016 |
| Discovery completion date | 7/18/2017 | 10/18/2017 |
| Discovery motions | 9/7/2017 | 12/7/2017 |
| Substantive pretrial motions | 10/12/2017 | 1/12/2018 |
| Rule 26(a)(3)(i) and (ii) final witness lists | 1/24/2018 | 4/24/2018 |
| Motions regarding expert witness qualifications | 2/15/18 | 5/15/2018 |
| Rule 26(a)(3)(iii) final exhibit lists | 4/10/2018 | 7/10/2018 |
| Trial | July 2018 | October 2018 |

4. The undersigned, counsel for Ohkay Owingeh, communicated by email with counsel for those parties that filed pleadings in response to the Pueblo's claims in this subproceeding, explaining the reasons necessitating the filing of this request for extension. Attached to the email was a draft of this motion. As of the filing of this motion, counsel for all parties have responded by email stating that they do not object to the modest extensions to this schedule as requested here.

For these reasons, Ohkay Owingeh respectfully moves the Court for an order authorizing an extension of one expert witness disclosure/filing deadline as set forth in Paragraph 3 of this motion.

Respectfully submitted,

Dated: January 22, 2014

/s/ Scott W. Williams

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AFFIDAVIT OF DR. HENRY WALT IN SUPPORT OF
OHKAY OWINGEH'S SECOND MOTION TO EXTEND TIME FOR
RULE 26 DISCLOSURE BY ONE EXPERT WITNESS

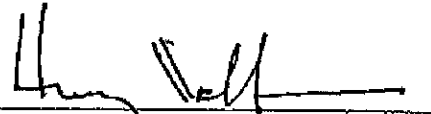
The undersigned, Dr. Henry Walt, declares under penalty of perjury as follows:

1. I am an ethnohistorian retained by Ohkay Owingeh in this matter.
2. The original due date for my Rule 26 report was December 6, 2013. I have had a series of unexpected health problems which necessitated counsel for Ohkay Owingeh to request an extension for the due date for my Rule 26 Report to and including February 7, 2014. The Court approved that request.
3. On December 12, 2013, I had surgery on my left eye for retinal detachment. At that time, I had completed an outline and first draft of my report.
4. Since that time, I have had limited reading ability. I am not fully recovered from that surgery as of this date.

5. The statements in the Motion concerning the post operative restrictions on my activities, including the prohibition on my ability to read, are true and accurate.
6. For these reasons I have asked the counsel for Ohkay Owingeh to request an additional extension of time to finalize and submit my report. If my recovery proceeds at the current pace, I will be able to complete my report by March 20, 2014.
7. Attached is a true and accurate statement from my surgeon, Dr. Mark T. Chiu, confirming this information.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 21, 2014

A handwritten signature in black ink, appearing to read 'Henry J. Walt', is written over a horizontal line.

Henry J. Walt, Ph.D.
508 Hermosa SE
Albuquerque, NM 87108



806 Dr Martin Luther King Jr
Albuquerque, NM, 871023657
(505)842-6575

Friday, January 03, 2014

This certifies that Henry J. Walt was seen by me today .

Comments: Henry Walt has had Retinal detachment repair surgery done in the Left eye done on 12-12-2013. He has had limited reading ability over the last month. Please take this into consideration with his work at this time. Any questions please call.

Electronically signed by: Mark T. Chiu, MD

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of January, 2014, I filed the foregoing electronically through the CM/ECF system, which caused the parties listed on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail.

/s/ Scott W. Williams

Scott W. Williams